

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4900

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MILLARD DEAN LOFTIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(2:92 CR 9 1)

(January 13, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Millard Dean Loftis was convicted by a jury of being a felon in possession and receipt of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Count I); receiving and concealing stolen firearms, in violation of 18 U.S.C. § 922(j) (Counts II and III); and possession of unregistered firearms, in violation of 26 U.S.C. § 5861(d) (Counts IV and V). He was sentenced to 120 months

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

imprisonment on each of Counts I-IV, to run concurrently, and to 31 months imprisonment on Count V, to run consecutively. Loftis now appeals his conviction and sentence. We affirm the district court's judgment of conviction and sentence.

I.

Millard Dean Loftis, a medical doctor, operated a medical clinic in Texarkana, Texas. In 1979, he had been convicted of mailing an explosive device and sentenced to 15 years imprisonment. He served five years of his sentence before he was paroled.

In early 1992, the United States Secret Service learned that Loftis kept firearms in his home, his office, and frequently on his person. The Secret Service also had reason to suspect that Loftis was involved in a bank fraud and money laundering scheme. In April 1992, Secret Service agents executed search warrants at Loftis' home and his clinic. At Loftis' home, in an area in which Loftis kept a home "office," agents discovered a storage area which had been secreted behind a mirrored glass wall. Numerous rounds of ammunition and twenty firearms were found in this storage area, including two which required registration under the National Firearms Act and two which had been reported as stolen.

At the clinic, the agents discovered a secreted room which had been built among the rafters and support beams above the clinic. Admission to this "room" could be obtained only by means

of a hidden stairway, which could be accessed only after removing a panel from the closet in Loftis' private office at the clinic. Two firearms--a semi-automatic shotgun and a .22 caliber rifle--were discovered in this "room."

Agents stopped Loftis in his truck on April 24, 1992, as he pulled into the parking area behind the clinic. They handcuffed Loftis and searched his person and his truck. One of the agents found a white plastic bag behind the seat of Loftis' truck. Inside of the bag were medical files and rubber signature stamps, which one of the agents recognized as instrumentalities in the bank fraud case on which he had been working and in which Loftis' involvement had been suspected. A stun gun and a key chain/knife combination were also found in the truck. Loftis was then arrested.

On May 20, 1992, a grand jury returned two separate indictments against Loftis. One indictment, which is the subject of the instant case, charged Loftis on five counts: Count I, being a felon in possession and receipt of a firearm, in violation of 18 U.S.C. § 922(g)(1); Counts II and III, receiving and concealing stolen firearms, in violation of 18 U.S.C. § 922(j); and Counts IV and V, possession of unregistered firearms, in violation of 26 U.S.C. § 5861(d). The second indictment charged Loftis on thirty-three counts of mail and wire fraud, bank fraud, money laundering, and interception of communications.

Because these two indictments were returned simultaneously, many pre-trial matters were handled jointly, even though the two cases were set to be tried separately. Loftis entered into a plea agreement with the government concerning the charges set forth in the bank fraud/money laundering indictment prior to the jury selection in the instant case. Loftis' wife at the time of these alleged offenses, Margaret Aaron, also admitted to being involved in the bank fraud and money laundering scheme with Loftis and pleaded guilty to the charges brought against her.¹

Prior to trial, Loftis filed a motion to suppress evidence found in Loftis' truck on the morning of his arrest at the clinic. Loftis alleged that the search of his truck was in violation of the Fourth Amendment and that thus evidence obtained from that search was inadmissible at trial. The district court denied Loftis' motion to suppress. Trial commenced on Loftis' alleged illegal possession of weapons in February 1993.

Mike Payne, an officer with the Texas Department of Public Safety, testified at trial that he had participated in the search of Loftis' clinic and that he had found a semi-automatic shotgun and a .22 caliber rifle in the room above the clinic. Larry Smith, an agent with the Bureau of Alcohol, Tobacco, and Firearms, testified that he had participated in the search of Loftis' home. According to Smith, Loftis' wife gave the agents involved in the search access to two self-contained apartments--

¹ We note that when first questioned by federal agents, Aaron had denied any involvement in or knowledge of the bank fraud/money laundering scheme.

designated as apartments "A" and "B"--that were part of Loftis' home. Smith testified that Loftis' wife did not know the combination of the lock to the door of apartment "A" and that he had to force the door open. It was in apartment "A," which Loftis used as a home "office," that agents discovered the storage area which had been secreted behind a mirrored glass wall and which contained rounds of ammunition and twenty firearms.

Shirley Ann Chiesa, a former assistant administrator of Taylor Medical Systems and Loftis' former employer, testified that after she had become romantically involved with Loftis, he had driven with her to a rural, wooded area where he showed her what he said was an "Uzi." She also testified that later she had purchased three guns at Loftis' request and delivered them to Loftis and that she had seen Loftis in possession of other guns.

Margaret Aaron, Loftis' wife, testified that after Loftis had moved in with her, two firearms--a Ruger pistol and a Browning Centennial rifle--had disappeared from her home. She identified the Browning rifle from the group of weapons that had been admitted into evidence at trial. Aaron further testified that she had purchased two pistols at Loftis' request in 1991 and that after she had delivered these pistols to Loftis, she never saw them again. She also testified that Loftis had received two guns from her father in 1992.

Mildred Jere Eckholm, who at one point worked for Loftis, was romantically involved with Loftis, and resided in apartment "B," testified that she had seen the "room" above the clinic and

that at that time it contained gun cases, two shotguns, and a pistol. She also testified that she had accepted the delivery of twelve gun cases for Loftis and that she had seen Loftis with a pistol during a trip she and Loftis' had taken in Loftis' camper. Moreover, she testified that while she was residing in apartment "B," Loftis admitted that he had taken two pistols of hers which she kept there. At trial, she identified the pistols seized from apartment "A" as her missing pistols.

A jury convicted Loftis on all five counts of illegal possession of weapons. He was sentenced to 120 months imprisonment on each of Counts I-IV, to run concurrently, and to 31 months imprisonment on Count V, to run consecutively. Loftis now appeals his conviction and sentence.

II.

Loftis first contends that the district court erred in denying his motion to suppress from evidence the items seized from his truck on the morning of his arrest. He argues that the items seized were products of a warrantless and illegal search in violation of the Fourth Amendment.

Even if we assume arguendo that the evidence in question-- i.e., rubber signature stamps, medical files, a stun gun, and a key chain/knife combination--was obtained as a result of an illegal search, Loftis' contention that the district court erred in denying his motion to suppress is moot. The government never introduced these items into evidence at Loftis' trial. Further,

the government's witnesses did not testify about this evidence at trial.² We therefore need not decide whether the district court erred by denying Loftis' motion to suppress.

III.

Loftis also contends that the district court reversibly erred by admitting over his objection testimony from Margaret Aaron, Loftis' wife at the time of the alleged offenses. Loftis argues that Aaron's testimony--that Loftis had counseled her to lie to federal agents about their bank fraud and money laundering activities--was "extraneous" evidence of "other acts" and thus inadmissible under Federal Rule of Evidence 404(b) because it reflected only an inference of Loftis' "bad character" and his purported propensity for misconduct. He also asserts that the admission of this testimony violated his Fifth Amendment right to answer only for a crime for which he had been indicted and his Sixth Amendment right to be informed of the nature and the cause of any accusation against him.

The government, on the other hand, asserts that Aaron's testimony was "inextricably intertwined" with the crimes of illegal possession of firearms with which Loftis was charged and as such was not subject to a Rule 404(b) analysis because it was "intrinsic" evidence of other acts. The government argues that

² We note that one of the government's witnesses testified that Loftis once beat her with a stun gun. However, the exhibit list of items introduced into evidence at trial indicates that no stun guns were introduced.

this testimony was relevant to show how Loftis totally dominated and controlled every aspect of his home and business, including persons with whom he lived and worked, and thus how the firearms found in Loftis' home and at the clinic were under his dominion and control. The government also asserts that Aaron's testimony was admissible because Aaron was subject to impeachment because of her prior inconsistent statements concerning her involvement in the bank fraud and money laundering scheme.

We must first note that the Fifth and Sixth Amendment contentions which Loftis raises on appeal were not raised in the district court and are asserted on appeal in merely a conclusory fashion as though they were "afterthoughts." He simply states in his brief:

[T]o admit this testimony is an error of Constitutional proportion. It is a violation of the Fifth Amendment right under the United States Constitution that any citizen shall only be held to answer for a crime for which he has been indicted by a grand jury. Additionally it violates the Sixth Amendment constitutional right to be informed of the nature and cause of the accusation.

In the absence of any argumentation or citation to any authority, we decline to reach the merits of these contentions concerning the admissibility of Aaron's testimony. See United States v. Ballard, 779 F.2d 287, 295 (5th Cir.) (holding that an issue raised on appeal "without citing supporting authorities" may be deemed abandoned on appeal because "notice pleading does not suffice for appellate briefs"), cert. denied, 475 U.S. 1109 (1986); see also Weaver v. Puckett, 896 F.2d 126, 128 (5th Cir.) (determining that an issue which a pro se appellant had raised in

his appellate brief, i.e., that the appellant was charged under the wrong state statute, but had not argued in that brief was deemed abandoned), cert. denied, 498 U.S. 966 (1990).

We do, however, address Loftis' contention that the district court erred by admitting Aaron's testimony because it was "extrinsic" evidence of other acts and hence inadmissible under Rule 404(b). This court has clearly differentiated between "extrinsic" evidence of other acts, whose admissibility is prescribed by Rule 404(b), and "intrinsic" evidence of other acts, whose admissibility is determined under the general relevancy provisions of Rules 402 and 403. See United States v. Williams, 900 F.2d 823, 825 (1990). Despite the different standards for determining the admissibility of "extrinsic" or "intrinsic" evidence, we need not determine in the instant case whether Aaron's testimony was "extrinsic" or "intrinsic" evidence and thus whether the district court used the correct standard in determining the admissibility of such evidence. We also need not determine whether Aaron's testimony was admissible for impeachment purposes, as the government contends. For if we assume arguendo that the district court abused its discretion in admitting Aaron's testimony and that the admission of this evidence was erroneous, the error was harmless in light of the substantial evidence of Loftis' guilt presented at trial. See United States v. Gadison, 8 F.3d 186, 192 (5th Cir. 1993) (an error in admitting evidence is harmless if it is obvious that the same result would have been reached in the absence of the error);

United States v. Williams, 957 F.2d 1238, 1242 (5th Cir. 1992) (unless a reasonable possibility exists that the improperly admitted evidence contributed to the conviction, reversal is not required). Loftis' argument concerning the admissibility of Aaron's testimony is thus without merit.

IV.

Loftis finally contends that the district court erred by denying his motion for a mistrial. We disagree.

Loftis moved for a mistrial after Eckholm testified that during a visit to Loftis' office in April 1991 because of injuries she had received from her husband, Loftis gave her two handguns, a knife, and a stun gun and told her to carry a weapon with her at all times to protect herself. Eckholm also testified that Loftis told her: "If [your husband approaches you], kill him. I will hide the body, and I will protect you."

Loftis objected to Eckholm's last statement as irrelevant and inadmissible as evidence of "extrinsic" acts under Rule 404(b). The district court sustained Loftis' objection and instructed the jury "not to consider that last statement for any purpose." Loftis then moved for a mistrial, which the district court denied.

We review the district court's denial of a motion for mistrial for an abuse of discretion. United States v. Ramirez, 963 F.2d 693, 699 (5th Cir.), cert. denied, 113 S. Ct. 388 (1992); United States v. Merida, 765 F.2d 1205, 1220 (5th Cir.

1985). To establish an abuse of discretion, a defendant must show that in the context of the whole trial the improperly admitted evidence was so prejudicial that it had a substantial impact on the verdict. Ramirez, 963 F.2d at 699; Merida, 765 F.2d at 1220.

Loftis has failed to establish that Eckholm's statement was so prejudicial that it had a substantial impact on the jury's verdict. The district court properly instructed the jury to disregard Eckholm's statement. Further, other evidence of Loftis' guilt was overwhelming. We thus cannot say that the district court's denial of Loftis' motion for mistrial was an abuse of discretion.

V.

For the foregoing reasons, we AFFIRM the judgment of the district court.